

OFFICE OF HEARINGS AND APPEALS
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

In the Matter of:

Michael Heyward,

Petitioner.

16- VH-0030-AG-005

721008131

May 5, 2017

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed by Petitioner, Michael Heyward, on January 19, 2016, concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

Pursuant to 31 C.F.R. § 285.11(f)(4), on January 19, 2016, the Court issued a *Notice of Docketing, Order, and Stay of Referral* in which the Court stayed the issuance of a wage withholding order until the issuance of this written decision. On February 19, 2016, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to comply with the Court’s orders to produce sufficient documentary evidence in support of her claim that the debt does not exist. This case is now ripe for review.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

The Subordinate Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. *Sec’y Stat.*, ¶ 2; Note, ¶ 4(A)(i).

On or about January 13, 2015, HUD terminated the FHA mortgage insurance on the primary mortgage because the primary lender notified the Secretary that the mortgage had been paid in full. *Sec'y Stat.*, ¶ 4; Ex. 1, *Declaration of Gary Sautter*, Acting Director, Asset Recovery Division, HUD Financial Operations Center, ("*Sautter Decl.*"), dated February 3, 2016, ¶ 4. The Note thus became due and payable on that date. The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. Exhibit 1, ¶ 9. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$1,895.93 as the total unpaid principal balance as of January 31, 2016;
- (b) \$4.74 as the unpaid interest on the principal balance at 1% per annum through January 31, 2016; and
- (c) interest on said principal balance from February 1, 2016 at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated January 6, 2016, was sent to Petitioner. *Id.* at ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter a written repayment agreement. *Id.* at ¶ 6. Petitioner did not enter a written repayment agreement or pay the debt in full in response to the Notice. *Id.* at ¶ 6.

The Secretary proposes a repayment schedule of \$325.93 per biweekly pay period or an amount equal to 15% of Petitioner's disposable pay.

Discussion

Petitioner disputes the existence and enforceability of the debt alleged by the Secretary. Petitioner claims that the debt may not be owed "because he believed that it was paid in full at the time he refinanced the real property secured by the primary mortgage." *Petitioner's Hearing Request (Hr'g Req.)*, filed Jan. 19, 2016. More specifically, Petitioner claims "[I] refinanced my home and I believe Bank of America is responsible for [debt]." *Id.* Petitioner introduced into evidence a copy of a Bank of America payoff statement, dated January 12, 2015, that showed a certain payment in the amount of \$175,389.39 to Bank of America when Petitioner refinanced his home. But, the same statement also lists *other amounts due* in the amount of \$2,176.76, the amount Petitioner argues was paid as full payment of the subject debt. (Emphasis added.)

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there either must be a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner. *See Hediéh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). The payoff statement provided by Petitioner did not reflect full payment of the subject debt. *See Petr's Stat.*, Ex. 1, ¶ 8; Ex. A. This evidence, standing alone, proves to be insufficient as support for Petitioner's argument.

The Secretary contends, however, that the full payment of the subject debt was never received and that Petitioner remains contractually obligated to pay the debt so claimed. The Secretary further contends that "the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full." *See Sec'y Stat.*, Ex. 1, 4. Upon termination, the amount alleged became due and payable yet was not paid by

Petitioner. The Secretary introduced into evidence copies of a sworn affidavit from the Acting Director of HUD's Asset Recovery Division and of the subject Note bearing Petitioner's signature. In the Note Petitioner agreed to pay the alleged debt should there be a default. Also in the Note were specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous. What is not reflected in the record is evidence of Petitioner's full payment of the debt associated with the Note.

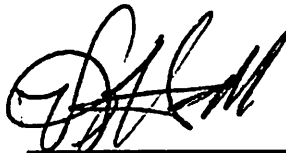
The Court has consistently maintained that "assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); 31 C.F.R. 285.11 (f)(8)(ii). Without sufficient evidence to refute or rebut the claims made by the Secretary, Petitioner remains indebted to HUD in the amount so claimed by the Secretary. Therefore, based on the record of evidence, the Court finds that Petitioner's claim fails for lack of sufficient proof.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is VACATED. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$325.93 per biweekly pay period or in an amount equal to 15% of Petitioner's disposable pay.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of Determination by Hearing Officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of this *Decision and Order*, and shall be granted only upon a showing of good cause.